

Johnson, Paul@SCC

From: Walter Lamb <landtrust@ballona.org>
Sent: Monday, May 1, 2023 11:03 AM
To: Cooper, Megan@SCC; Hutzel, Amy@SCC
Cc: SCC Public Comment; Douglas H. Bosco; Joseph Alioto; Cash, Bryan@CNRA; Miller, Gayle; Donne@Coastal; Gutiérrez-Graudiņš, Marce@SCC
Subject: 408 permit for Sequences 1 and 2

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Megan and Amy,

As I noted to you previously, the Conservancy's Ballona Wetlands [project page](#) contains misinformation about the status of a determination as to whether a Section 408 permit is needed to commence construction of the first two sequences of the Ballona Wetlands Restoration Project. On September 19, 2022, that page was updated to state that "CDFW has commenced restoration of BWER by starting Sequences 1 and 2 of the Project, which do not require a 408 permit." Setting aside that no restoration activities have commenced or can commence until all required permits are secured, the record shows that the U.S. Army Corps of Engineers has determined, at least initially, that a 408 permit *is* required for this work. On September 21, 2022, just two days after the Conservancy's project page was updated, a consultant from Environmental Science Associates had a phone call with an engineer from the U.S. Army Corps of Engineers that led to a lengthy email [exchange](#) in which ESA informed the Corps on November 3, 2022 that "We'd like to understand if a 408 permit is required for this project" to which the Corps responded on November 21, 2022 that "We have determined that the proposed project would constitute or include an alteration or modification to the Federal Project and therefore, does require a Section 408 permission." Subsequent communications indicate that ESA and CDFW are still trying to convince the Corps to reverse that initial determination, but there is no indication in the record that the Corps intends to waive the 408 permit requirement.

This is highly relevant to the Conservancy's May 27, 2021 funding authorization, which was supposed to support *obtaining* a 408 permit, as opposed to *bypassing* a 408 permit. The purpose of diverting the authorized funds to design and permitting for just the first two sequences was to avoid the time and expense that would be needed to obtain a 408 permit. The true extent of the time and expense of obtaining a 408 permit was concealed from the Board and public at the time of the May 2021 authorization. Now that the Corps has initially determined that a 408 permit is required even for just the first two project sequences, which would effectively derail this latest effort, ESA/CDFW are under intense pressure to scale back the design of those sequences even further in order to convince the Corps that a 408 permit is not necessary. However, even if they redesign the work such that it might not have required a 408 permit as a stand-alone project, the digging of new channels in South and Southeast Area B was inextricably linked in the EIR to additional construction sequences in Phase 1 of the selected alternative which would be necessary to allow more water into those newly constructed channels. In the EIR, this was to be accomplished via realignment of the Ballona Creek and the construction of Culvert #3, which would connect the rerouted Ballona Creek to Southeast Area B. However, because that work is not included in Sequences 1 and 2, ESA/CDFW were forced to explore other ways to get water from Ballona Creek into South and Southeast Area B. Their initial plan was to allow more water to flow through the tide gates in West Area B, the opposite of what was analyzed in the EIR and which would put salt pan habitat at risk. More recently, they appear to be considering a design in which the Freshwater Marsh outlet drains would be reconfigured to allow water from Ballona creek to flow into Southeast Area B, which raises additional questions. Because sequences 1 and 2 are indisputably part of a larger, 35-sequence project, the Corps is legally obligated to evaluate the entire project to determine whether that **full project** requires a 408 permit, which both CDFW and the Conservancy have acknowledged

is the case. This is also true of the Coastal Commission's and LA Regional Water Board's permitting processes as well . While these and other agencies may be very eager to bend their rules in order to help CDFW limp across the starting line with some semblance of a project, they cannot legally do so. The short-cut that CDFW and Conservancy staff thought they had found for this project was just an expensive and time-consuming detour back to the same point in the process.

There is no support in the record for the assertion that a 408 permit is not required for the first two construction sequences of the project. Please update the Conservancy web page to accurately and objectively reflect that the Corps' initial determination was that a 408 permit will be required and that any change in that determination won't be made until final designs are submitted for the Corps' approval. Please also put, at a minimum, an informational item on the Conservancy's June 1 agenda in order to update the Board and the public on the status of this project in an open public forum. There has never been any agendized discussion of the "Sequences 1 and 2" work which flies in the face of Board member comments dating back to 2021 and reiterated in 2021 and 2022 about the need for frequent updates on the Ballona Wetlands Restoration Project, which the Conservancy began funding and coordinating in 2004. All of the Conservancy's project planning funding is at risk, and this merits the attention of the Board.

Thank you for your consideration of these comments.

Walter Lamb
Ballona Wetlands Land Trust

On Tue, Apr 25, 2023 at 6:14 PM Walter Lamb <landtrust@ballona.org> wrote:

Megan,

I raised this issue previously and have not received a response. There is no basis for the Conservancy's assertion that "Sequences 1 and 2 of the Project . . . do not require a 408 permit". A Corps email from last year flatly stated that "We have determined that the proposed project would constitute or include an alteration or modification to the Federal Project **and therefore, does** require a Section 408 permission." (bold added). The attached memo shows that ESA and CDFW are still trying to reverse that determination, but neither they nor SCC staff can provide any evidence that the Corps is inclined to reverse itself. This is important because securing a 408 permit would more than blow out the budget and timeframe for the "Sequences 1 and 2" work that the Conservancy Board never authorized in the first place. Even more importantly, the Corp can't legally permit only a portion of a project as part of the NEPA and 408 process. That is called "segmenting" or "piecemealing" and is prohibited. Every indication is that the Corps **will** require a 408 permit and the Conservancy Board has to have an honest and objective understanding of that risk. If you don't correct the relevant language on the SCC project update page you will be actively misleading the Board and public.

Walter Lamb
Ballona Wetlands Land Trust